

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

KYLE J. RODNEY,

*Petitioner,*

vs.

WARDEN BAKER, *et al.*,

*Respondents.*

3:13-cv-00323-RCJ-VPC

ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the Court on petitioner's motion (#12) for leave to amend the petition, respondents' motion (#13) to dismiss the original petition, respondents' motion (#19) for leave to file exhibit in camera and under seal, respondents' motion (#23) to withdraw their motion to dismiss, and sundry motions (## 11, 24 & 25) for enlargement of time filed by the parties.

The motion to amend will be denied without prejudice.

The scheduling order in this action stated in pertinent part: "If petitioner is aware of any claim not included in his petition, he should notify the Court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim, including the proposed amended petition." #6, at 2. Petitioner has presented a motion in which he presents both factual allegations and extensive legal argument on additional claims. He does not attach a proposed amended petition including all of his claims.

In order to amend the petition, petitioner instead must:

- (a) present all claims that he seeks to pursue, including from the original petition and all amendments, in one complete, stand-alone proposed amended petition;

- 1 (b) use the Court's required petition form for the amended petition;
- 2 (c) allege the facts supporting his claims in the amended petition, without legal
- 3 argument;
- 4 (d) submit the proposed pleading with a separate motion to amend; and
- 5 (e) present argument in the motion to amend seeking to establish that the
- 6 proposed amendment would not be futile given any issues of exhaustion,
- 7 timeliness and/or procedural default as to the additional claims.

8 The Court will give petitioner an opportunity to file motion for leave to file an amended  
9 petition that meets these requirements.

10 If petitioner files a motion for leave to amend, respondents must respond to that  
11 motion, just as they must respond to all motions filed by the petitioner once the Court has  
12 directed a response to the petition pursuant to the habeas rules. An unopposed motion may  
13 be granted.

14 The Court addresses the remaining motions in the disposition paragraphs below.

15 IT THEREFORE IS ORDERED that petitioner's motion (#12) for leave to amend is  
16 DENIED without prejudice.

17 IT FURTHER IS ORDERED that petitioner shall have **sixty (60) days** within which to  
18 mail to the Clerk of Court for filing a motion for leave to amend that satisfies the requirements  
19 of paragraphs (a) through (e) in the text of this order, including presentation of a proposed  
20 amended petition. If petitioner does not do so timely, the action thereafter will proceed  
21 forward on the claims in the original petition (#7) only.

22 IT FURTHER IS ORDERED that petitioner shall clearly title any proposed amended  
23 petition submitted in response to this order as an amended petition by placing the word  
24 "AMENDED" immediately above "Petition for a Writ of Habeas Corpus" on page 1 in the  
25 caption and shall place the docket number, **3:13-cv-00323-RCJ-VPC**, above the word  
26 "AMENDED." Under Local Rule LR 15-1, the amended petition must be complete in itself  
27 without reference to previously filed papers. Thus, the claims and allegations that are stated  
28 in the amended petition will be the only matters remaining before the Court if leave to amend

1 is granted. Any claims or allegations that are left out of the amended petition or that are not  
2 re-alleged therein then no longer will be before the Court.

3 IT FURTHER IS ORDERED that respondents' motion (#23) to withdraw respondents'  
4 motion to dismiss is GRANTED and that the motion (#13) to dismiss is WITHDRAWN.

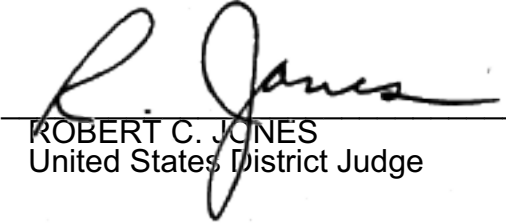
5 IT FURTHER IS ORDERED that: (a) if petitioner files a motion for leave to amend,  
6 respondents shall have **thirty (30) days** to file an opposition to the motion and shall address  
7 whether issues such as exhaustion, timeliness and/or procedural default would render the  
8 proposed amendment futile, with petitioner thereafter having **thirty (30) days** to mail a reply;  
9 and (b) if petitioner files no motion for leave to amend, respondents shall have **ninety (90)**  
10 **days** from the date of entry of this order to file a renewed response to the original petition.<sup>1</sup>

11 IT FURTHER IS ORDERED that respondents' motion (#19) for leave to file petitioner's  
12 presentence report under seal is GRANTED. The Court finds, in accordance with the  
13 requirements of *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9<sup>th</sup> Cir. 2006), that  
14 a compelling need to protect the privacy, safety, and personal identifying information of  
15 petitioner and others in the material outweighs the public interest in access to court records.

16 IT FURTHER IS ORDERED that all motions (## 11, 24 & 25) for an enlargement of  
17 time are GRANTED to the extent consistent with the deadlines established herein.

18 The Clerk shall SEND petitioner two copies of a noncapital § 2254 petition form  
19 together with one copy of the instructions for same along with a copy of the original petition  
20 (#7) and his motion (#12) to amend.

21 DATED: February 18, 2014.

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25 ROBERT C. JONES  
26 United States District Judge  
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<sup>1</sup>If a motion for leave to amend is filed, the Court will establish a schedule for further proceedings in the order ruling on the motion.